

(f) When a decision by a presiding official is based in whole or in part on evidence not included in the record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

§ 584.10 What is the process for pursuing settlement or a consent decree?

(a) *General.* At any time after the commencement of a proceeding, but at least 5 days before the date scheduled for hearing under § 584.6, the parties may jointly move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) *Content.* Any agreement containing consent findings and an order disposing of the whole or any part of a proceeding shall also provide:

(1) A waiver of any further procedural steps before the Commission;

(2) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(3) The presiding official's certification of the findings and that the agreement shall constitute dismissal of the appeal and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Submit to the presiding official a proposed agreement containing consent findings and an order;

(2) Notify the presiding official that the parties have reached a full settlement or partial settlement and have agreed to dismissal of all or part of the action, subject to compliance with the terms of the settlement agreement; or

(3) Inform the presiding official that agreement cannot be reached.

(d) *Disposition.* In the event a full or partial settlement agreement containing consent findings and an order is submitted within the time granted, the presiding official shall certify such findings and agreement within 30 days after his or her receipt of the submission.

Such certification shall constitute full or partial dismissal of the appeal, as applicable, and final agency action.

§ 584.11 Will the hearing be transcribed?

Yes. Hearings under this part that involve oral presentations shall be recorded verbatim and transcripts thereof shall be provided to parties upon request. Each party shall pay its own fees for transcripts.

§ 584.12 What happens after the hearing?

(a) Within 30 days after the record closes, the presiding official shall issue his or her recommended decision, except that if the subject of the appeal is an order of temporary closure under § 573.4 of this chapter, the presiding official shall issue a recommended decision within 20 days after the record closes.

(b) The recommended decision shall be in writing, based on the whole record, and include:

(1) Recommended findings of fact and conclusions of law upon each material issue of fact or law; and

(2) A recommended grant or denial of relief.

(c) The presiding official's recommended decision is reviewed by the Commission. The Commission issues the final decision.

§ 584.13 May I file an objection to the recommended decision?

Yes. Within 20 days after service of the presiding official's recommended decision, any party may file objections with the Commission to any aspect of the decision and the reasons therefore, unless the recommended decision is to dissolve or make permanent a temporary closure order issued under § 573.4 of this chapter, in which case objections to the recommended decision must be filed within 5 days after service of the recommended decision.

§ 584.14 When will the Commission issue its final decision?

(a) The Commission shall issue its final decision within 90 days after the date of the recommended decision or